

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

)	
Cambridge Electric Light Company,)	
Commonwealth Electric Company, Boston)	D.T.E. 03-47
Edison Company,)	
NSTAR Gas Company, d/b/a NSTAR)	
)	

**MOTION OF THE ATTORNEY GENERAL TO DISMISS THE PETITION OF THE
CAMBRIDGE ELECTRIC LIGHT COMPANY, COMMONWEALTH ELECTRIC
COMPANY, BOSTON EDISON COMPANY, NSTAR GAS COMPANY, d/b/a NSTAR**

I. INTRODUCTION

NSTAR has asked the Department of Telecommunications and Energy (“Department”) to increase pension expense, a type of cost already included in base rates, and to approve a new reconciling mechanism for the recovery of these expenses. In short, NSTAR wants to raise rates. Customers in Massachusetts, however, face some of the highest costs for energy in New England. The Department should take every step to keep rates down in this tough economic climate. Consumers cannot afford additional increases in their energy rates to recover the impact of temporary stock market losses in NSTAR’s trust funds for retirees.¹ Pursuant to 220 C.M.R. §1.06(6)(e), the Attorney General asks the Department to dismiss the Company’s petition for the following reasons:

- NSTAR proposes a single issue rate case.
- NSTAR’s petition violates the merger rate freeze.
- NSTAR’s petition violates the Department’s merger reporting directives.

The Company asks the Department to increase the amounts it recovers for pension and

¹ NSTAR includes Cambridge Electric Light Company, Commonwealth Electric Company, Boston Edison Company, and NSTAR Gas Company (“Company” or “NSTAR”).

post-retirement benefits other than pensions (“PBOP”) without a comprehensive review of its total costs and revenues.² NSTAR, however, has not submitted any evidence that it failed to earn its allowed rate of return or that current rates would be too low without the recovery of the higher pension costs. The Department should dismiss this isolated proposal because it would not allow the Department to determine the overall impact on the Company’s return on equity and the reasonableness of the resulting rates for customers, and so represents “single-issue ratemaking” disfavored by the Department.

The Department also should dismiss this proposal because it violates the existing rate freeze from the NSTAR merger case, D.T.E. 99-19 (1999). NSTAR proposed tariffs for effect May 1, 2003, that would allow recovery for expenses incurred in 2002 and 2003. The Department suspended the effective date of those tariffs until August 1, 2003. Under the merger rate freeze, there can be no general increase in the Company’s distribution rates until after a rate case and review of merger savings and cost allocation reports. This rate freeze does not expire until September 2003.

II. STANDARD OF REVIEW

A. Motion To Dismiss

A party may move for dismissal as to all issues in a case at any time after the filing of an initial pleading. 220 C.M.R. § 1.06(6)(e). Although the Department has looked to Mass. R. Civ. P. 12(b)(6) for guidance in evaluating a motion to dismiss, the Department has not formally

² Because the Company proposes a reconciling mechanism and the Electric Restructuring Act may constrain rate increases, some of the increases to the customers of the electric distribution companies may be deferred. G. L. c. 164, §1B (15% rate reduction for the seven year transition period ending in March 2005). The Electric Restructuring Act does not apply to the NSTAR Gas Company, whose customers would be unprotected from an immediate increase.

adopted this rule of civil procedure. *Fitchburg Gas and Electric Light Company*, D.T.E. 99-118, p. 4, n. 4 (2001); see *Stow Municipal Light v Hudson*, D.P.U. 93-124-A, pp. 4-5 (1993).

In determining whether to grant a motion to dismiss, the Department takes the assertions of fact in the petition as true and construes them in favor of the non-moving party. *Fitchburg Gas and Electric Light Company*, D.T.E. 99-118, p. 4. The Department will dismiss a case if it appears that the non-moving party would be entitled to no relief under any statement of facts that could be proven in support of its claim. *Id.* The Department may also dismiss a case when a petition does not comply with Department directives. *Dedham Water Company*, D.P.U. 85-119, pp.16-20 (1985) (dismissal without prejudice of rate petition appropriate remedy when company fails to file with its initial case materials required by Department directives).

III. ARGUMENT

A. By Requesting An Increase In Pension And Related Costs And Recovery Of These Costs In A Reconciling Mechanism, NSTAR Has Proposed A Single-Issue Rate Case Disfavored By The Department.

The Department, under the doctrine against single-issue rate cases, should dismiss the Company's attempt to increase a single expense from distribution base rates and recover it through a reconciling clause. The Department stated recently that it "is generally indisposed to single-issue rate cases." *Default Service Order*, D.T.E. 02-40, pp. 18-20 (2003).³ The Massachusetts Supreme Judicial Court has recognized this policy. *Attorney General, et al. v. Department of Telecommunications and Energy, et al.* 438 Mass. 256, 258 (2002). ("Nor did the

³ The Department has rejected single-issue rate adjustments many times: see, e.g., *Boston Edison Company*, D.P.U. 92-23/92-24, p.4 (1992); *Commonwealth Gas Company*, D.P.U. 92-151, p. 4 (1992); *Mass-American Water Company*, D.P.U. 95-118, p. 175 (1995); *Housatonic Water Works Company*, D.P.U. 95-81, p. 3 (1996); *Fitchburg Gas and Electric Light Company*, D.T.E. 97-115/98-120, p. 39 (1999).

adjustment represent disfavored single-issue ratemaking. The department did not change rates to account for a cost increase in relation to a single item expense.”) The Department’s policy is a “firmly enforced” prudential rule, and it only makes exception and allows single-issue rate adjustments in limited and extraordinary circumstances. *Default Service Order*, D.T.E. 02-40, pp. 18-20. That is not the case here.

The Department has considered favorably, as one of many factors, a revenue neutral adjustment to rates when answering the question of whether the doctrine against single issue rate cases bars a utility’s proposal. *Default Service Order*, D.T.E. 02-40, p. 20. The Company’s proposed adjustment to rates would not be revenue neutral, but rather would increase rates to recover additional pension and PBOP costs. *Default Service Order*, D.T.E. 02-40, p. 18 (“[T]o ensure that this is a revenue-neutral process to distribution companies, these same costs must be removed from the companies’ distribution base rates.”) NSTAR’s proposal cannot adequately be addressed outside the context of a rate case. *See Default Service Order*, D.T.E. 02-40, p. 18, *citing Default Service Pricing and Procurement*, D.T.E. 99-60-A, p. 10.

The Company’s proposal shifts the risks of the changes in pension and PBOP costs from its shareholders to ratepayers. Since NSTAR’s allowed return on equity already includes compensation for this operating risk, the proposal will decrease the Company’s cost of capital. Removing pension and PBOP costs from base rates should then require a corresponding reduction to the return on equity, but the Company does not propose any. Proposed Tariffs M.D.T.E. 109, 209, 309, 406. The impact of NSTAR’s proposal on the cost of capital should put downward pressure on rates. Furthermore, the Company projected to save hundreds of millions of dollars in synergies after 1999 merger that created NSTAR. *Cambridge Electric*

Light Company, Commonwealth Electric Company, Boston Edison Company, Commonwealth Gas Company, D.T.E. 99-19, pp. 65-67 (1999). These decreases in the Company's expenses may fully offset any increase in pension and PBOP costs, and thus may eliminate the need for rate relief. But there is no way to determine this issue without a rate case. The NSTAR companies have not had fully-litigated rate cases in many years, so there is no way to determine, without a full rate case review, whether the proposed increase would yield just and reasonable rates under the Department's historical test year method. The Department should dismiss the Company's proposal because it represents an unworkable single-issue rate case.

B. NSTAR Has Not Plead A Claim For Relief In Compliance With The Merger Rate Plan.

1. The Petition Violates The Merger Rate Freeze.

NSTAR's reconciling mechanism does not comply with the requirements of the merger rate freeze. To the contrary, NSTAR's proposal seeks recovery of pension and PBOP expenses from 2002 and the first eight months of 2003,⁴ directly contravening the merger rate freeze order.

The rate freeze applies to distribution rates until September 2003. *NSTAR*, D.T.E. 99-19, pp. 4-5, 22-28 (four year general distribution rate freeze as part of merger plan), *affirmed*,

⁴ The adjustment is a reconciling mechanism that would have three components. Testimony James J. Judge, Exh. NSTAR-JJJ, pp. 27-37. The first component, the Average Differential Amount, would be determined as the difference between the pension and PBOP's cost amounts included in the Company's base rates and the three-year average of the amount that the Company has "funded" for the pension and PBOP plans. Under the Average Differential Amount, NSTAR seeks recovery of expenses incurred in 2003. Under the second component, the Reconciliation Adjustment, NSTAR seeks recovery of expenses incurred in 2002 amortized over three years. The third component is the carrying charges on the deferred balance at the pre-tax weighed cost of capital. Proposed Tariffs M.D.T.E. 109, p. 2 of 3; Exh. NSTAR JJJ, pp. 29-31.

Attorney General, et al. v. Department of Telecommunications and Energy, et al. 438 Mass. at 258 (2002) (four year freeze in distribution rates). The Company has asked that the new tariffs become effective during the rate freeze, on May 1, 2003. Proposed Tariffs M.D.T.E. 109, 209, 309, 406. The Department should not allow the Company to avoid the consequences of the rate freeze by surgically removing just one element from its cost of service and then requesting recovery for costs incurred during the rate freeze period. Customers are entitled to the entire benefit of the four years of fixed distribution rates, an integral part of the Department's rationale behind approving the merger rate plan. *NSTAR*, D.T.E. 99-19, p. 24 ("On balance, the Department considers ratepayers to be better served by a commitment now to a four-year rate freeze than by conducting a rate case examination now of actual cost savings and cost increases.")⁵ The Company has not demonstrated any type of revenue deficiency that would entitle it to file a request for an increase in base rates during the freeze period. *NSTAR*, D.T.E. 99-19, pp. 86, 94.

2. The Petition Violates The Department's Merger Reporting Directives.

Even if NSTAR had presented some type of hardship permitting relief from the rate freeze, the Company has failed to submit two important filings the Department ordered, the merger savings and allocations reports. *Id.* The Department stated:

⁵ The Reconciliation Amount provides for the recovery of the difference between the pension and PBOP expense amounts included in base rates and the expense amounts that the Company records on its books. The difference, including any past deferrals, is amortized and recovered over a three-year period. Changes to pension and PBOP expense do not qualify as an exogenous cost under the merger rate plan since the drop in the stock market that prompted NSTAR's petition did not "uniquely effect" the electric or gas distribution industry. *NSTAR*, D.T.E. 99-19, p. 35. The recent stock market volatility has effected every company pension fund, even if their structures have borne the impact in different ways. Furthermore, NSTAR requested the accounting deferral; the deferral was not "actually beyond" the Company's control.

To confirm the confidence in the forecast of savings and to document for future proceedings that merger-related cost-cutting measures were implemented during the rate freeze, the Department directs [NSTAR] ***to file a onetime report of cost-saving*** measures taken and results achieved during the rate freeze. That joint report of all four companies will be due not later than 90 days after the end of the rate freeze ***(or not later than the filing by any of the four companies of a future rate proceeding, should such a proceeding occur first)***.

NSTAR, D.T.E. 99-19, p. 86 (emphasis added). The Company also “shall provide the Department with their proposal for an allocation method encompassing the entire corporate system created by the merger” within ninety days of the end of the rate freeze or when one of the distribution companies seeks rate relief. NSTAR, D.T.E. 99-19, p. 94. For purposes of the merger rate freeze, the Company’s request proposes a form of rate relief. Pension and PBOP costs are not new business costs. Utilities in Massachusetts already recover a representative level of these costs through their existing distribution rates. Testimony of James J. Judge, Exh. NSTAR-JJJ, pp. 18-37. Simply recharacterizing these costs as a new reconciling charge customers must pay does not change the fact that the Company proposes to increase just one category of expenses from its cost of service. The Department should not permit the Company to avoid the rate freeze by creating a new reconciling mechanism. The Company has failed to file reports required by the Department that will allow the Department to evaluate the propriety of the request for rate relief. Consequently, the petition must be dismissed. *Dedham Water Company*, D.P.U. 85-119, p. 16-20.

IV. CONCLUSION

For these reasons, the Department should grant the Attorney General's motion to dismiss NSTAR's petition.

RESPECTFULLY SUBMITTED,

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